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APR 11 2003

**Director's Office
Office of Patent Publication**

In re Application of :
Alexander Rizkin, et al. :
Application No. 09/867,881 :
Filed: May 30, 2001 :
Attorney Docket No. 166.134 :

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment Pursuant to 37 CFR 1.181(a), received in the United Patent & Trademark Office (USPTO) on November 18, 2002.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely pay the issue fee as required in the NOTICE OF ALLOWANCE AND FEE(S) DUE, mailed April 23, 2002, which set a three (3) month statutory period for reply. Accordingly, the Notice of Abandonment was mailed October 17, 2002.

Petitioner states that the issue fee was timely paid on July 23, 2002. In support of this assertion, petitioner has submitted a copy of the PTO-stamped postcard, which indicates that the PTO received the Issue Fee and Drawings on July 23, 2002.

The USPTO acknowledges receipt of PART B – FEE(S) TRANSMITTAL and Drawings on July 31, 2002, as evidenced by the "Office Date" stamp thereon, and which are present in the application file. The TRANSMITTAL authorized that the required fees be charged to Deposit Account No. 50-2241. Unfortunately, on October 3, 2002, when the Office of Finance attempted charge the Issue Fee, Publication fee, and advance copy fee, there were insufficient funds in the Deposit Account. The petitioner therefore has not complied with 37 CFR 1.25(b), which states in part:

... An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to charged unless sufficient funds are present in the account to cover the fee.

In light of the non-compliance with 37 CFR 1.25(b), the holding of abandonment cannot at this time be withdrawn.

The petitioner should consider petitioning the Commissioner as follows:

File a petition for Revival of Abandoned Application or Lapsed Patent under CFR § 1.137

(a) (a) or (b).

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable:
and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

With respect to an application filed before June 8, 1995, any petition under § 1.137(a) or (b) that is filed more than six months after the abandonment date must—according to § 1.137(d)—be accompanied by a terminal disclaimer with disclaimer fee.

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: 703-308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Rm. 3C23
2201 South Park Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to the Office of Petitions at 703-305-9282.

Thomas E. Hawkins

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